"We regret to say that Dr. Rintoul was of no assistance to the court. The results of the preliminary tests carried out by him were most unsatisfactory. He had not challenged or repudiated Mr. Lim's figures. Mr. Lim, within a period of six months, had carried out two tests and obtained almost identical results. Dr. Rintoul's evidence failed to throw any doubt whatever on the accuracy of Mr. Lim's analysis. There was no suggestion by the defence that the quantitative analysis of Mr. Lim was so inaccurate that there was a possibility or probability that the quantitative analysis of Dr. Rintoul might prove that the weight of morphine to be less than 30 grammes. We accepted the results obtained by Mr. Lim. For these reasons the application for adjournment was refused."

Their Lordships see no reason for differing from this view. The evidence that Dr. Rintoul had given was insistent on the accuracy of gas chromotographic analysis. It contained no suggestion that any further analysis of the contents of the packages by him might show a morphine content of less than 30 grammes; and unless he could do this, any minor differences in the figures of morphine content would be irrelevant to the offence with which the appellant was charged.

Counsel for the appellant has not sought to urge that, if he failed on the question as to the adjournment, he could succeed in this appeal upon the second ground, viz. that after hearing the evidence as to the circumstances in which the appellant's confession was made, the judges ruled that it was admissible without giving to appellant's counsel an opportunity to make submissions to the contrary.

The judges did in fact listen to counsel's submission after they had indicated their initial ruling but, as they said, he failed to make them change their minds. Quite apart from this, however, there was ample evidence against the appellant without recourse to the confession. Their Lordships are satisfied that the appellant did not suffer any denial of justice at his trial. The appeal must therefore be dismissed.

Appeal dismissed.

Solicitors: *Coward Chance; Charles Russell & Co.*

SINGAPORE REPORTS

VISUVANATHAN v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) February 21, 1978]

[Singapore — Criminal Appeal No. 22 of 1976]

Criminal Law and Procedure — Murder — Drunkenness — Admissibility of cautioned statement — Penal Code, s. 300.

Penal Code, s. 300 — Murder — Drunkenness — Cautioned statement.

Evidence — Cautioned statement — Admissibility.

This was an appeal against the conviction of the appellant for murder. The trial judges found that the appellant started a fight with the deceased and that he stabbed the deceased in the chest. They held that the injuries the appellant inflicted on the deceased were not in exercise of the right of private defence. They also found that the appellant was not so drunk as not to know what he was doing at the material time and was not so affected by alcohol as to be incapable of forming the specific intent under Clause (c) of section 300 of the Penal Code. Accordingly they found the appellant guilty of murder as charged. A cautioned statement of the appellant was admitted in evidence at the trial.

Held: (1) the trial judges were entitled on the evidence before them at the "trial within a trial" to find that there was no inducement, threat or promise and that the appellant's cautioned statement was made voluntarily;

(2) in this case the evidence was overwhelming that the appellant caused the death of the deceased in circumstances which amounted to murder under the Penal Code.

COURT OF CRIMINAL APPEAL.

A.B. Netto for the appellant.

Lawrence Ang (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): The appellant, Visuvanathan s/o Thillai Kannu, was convicted by the High Court of the murder of one Madikum Puspanathan and was sentenced to death. We dismissed his appeal against his conviction and sentence at the conclusion of the appeal and stated we would give our reasons later. We now proceed to do so.

The deceased, Madikum Puspanathan, was found by the police lying dead on the road in front of No. 67 Jalan Besar. He had two stab wounds, some minor abrasions and a superficial cut at the base of the right thumb. The pathologist who performed the autopsy certified the cause of death as a stab wound into the heart. That wound is described in the autopsy report as follows: —

"*Fatal gaping stab-wound* below left clavicle.

External appearance	—	Triangular, base 1½ cm., sides 4 cm., with upper tip pointed to left shoulder. Margins were sharp.
Direction	—	downwards and inwards, to central portion of chest.
Depth	—	about 8 cm. deep.
Damages	—	cut through 3rd and 4th rib near left parasternal edge, penetrated left lung (near anterior margin of left upper lobe), then produced a 2 cm. cut at the anterior surface of the heart. (Right ventricle, below pulmonary valve."

The other stab wound was at the left subcostal margin and was externally a cut 2.8 cm. long with a depth of 3.5 cm. directed downwards, inwards and to the left side.

There were two eye-witnesses to the stabbing. They were Pakrisamy Loganathan and Karuppiah Suppiah who were friends of the deceased. They gave evidence at the trial and were the main prosecution witnesses. Loganathan testified that at about 6 p.m. on January 23, 1976 the deceased had a drink with him at a toddy shop at Sungei Road. From there they went to a Chinese liquor shop at No. 73 Jalan Besar at about 6.30 p.m., sat at a table and ordered a bottle of Chinese liquor. Inside the liquor shop there were three male Indians, one of whom was the appellant, who were seated at another table. Soon after, the appellant from where he was seated asked the deceased why the deceased was staring at him to which the deceased replied that he was not. The appellant then stated he was the leader of the gangsters of Veerasamy Road, knew how to box and karate and had been in jail before. The deceased responded saying "If you are you can keep it to yourself."

Soon thereafter, the appellant and his two companions left the liquor shop but 10 minutes later the appellant returned alone and sat at the deceased's table. The appellant then asked the deceased to buy him a drink whereupon the deceased ordered a quarter bottle of Chinese liquor which the appellant emptied into 3 glasses. While the three of them were drinking, Loganathan saw a friend, Suppiah, outside the liquor shop and he went out to speak to Suppiah and returned to the table. After that the appellant left the liquor shop and, soon after, the deceased also left the table and went outside but returned a few minutes later. After the deceased's return the appellant also returned to the liquor shop, stood by the table, gulped down his drink and challenged the deceased to a fight. Loganathan separated them and then left the liquor shop to buy cigarettes. As he re-entered the liquor shop he saw the appellant pulling the deceased out on to the street and there started a fight with the deceased. Loganathan tried to stop the fight but while he was doing so the proprietress of the liquor shop shouted for her bill to be paid and so Loganathan returned into the liquor shop and paid the bill. After doing so Loganathan returned to the scene of the fighting and saw the deceased being stabbed on the left chest by the appellant using a knife. After stabbing the deceased the appellant ran into a back lane. The deceased, holding his left chest with his hand, ran towards the junction of Jalan Besar and Upper Weld Road.

Suppiah testified that soon after he had spoken to Loganathan outside the liquor shop the appellant hailed him and asked him what Loganathan had been speaking to him about and boasted to him that he (the appellant) was a secret society member in the Jalan Besar area. At this stage, the deceased came up to them and asked Suppiah what they had been talking about to which Suppiah replied "Nothing". Suppiah then in answer to a question by the appellant said he had known the deceased since he was a small boy. The appellant and the deceased then started an argument whereupon Suppiah told them not to argue and tried to send them back into the liquor shop. Suppiah then left with his girl friend and had coffee at a coffee stall nearby. Shortly thereafter on hearing a shout coming from the direction of the liquor shop, he went towards where the sound had come from and saw the deceased with Loganathan on one side of the road and the appellant on the other side. He saw the deceased and the appellant rushing towards each other. He then saw the appellant, holding a dark object, deliver a blow to the chest of the deceased as they were facing each other. At this stage his girl friend came up to him and pulled him back to the coffee stall. At the coffee stall he saw the appellant running in front of a back lane and holding in his hand an object that looked like a knife. Then he saw Loganathan walking towards the direction of Serangoon Road. Then someone whom he knew came up to him and told him the deceased was lying down at Jalan Besar road and so he rushed there with his girl friend and saw the deceased lying on the road and saw blood under the deceased's body.

Tamil Mulai, a cousin of the appellant, gave evidence for the prosecution. She said that at about 6.30 p.m. on January 23, 1976 the appellant, who was staying at her mother's house No. 118 Veerasamy Road, came home, changed his shirt, took a kitchen knife and wrapped it in a piece of paper and left the house with it. Later that day, at about 7.15 p.m. she saw the appellant at home with the same knife which had blood on it and she heard the appellant tell her mother that he had killed a man in Jalan Besar.

A cautioned statement made by the appellant after his arrest was admitted in evidence and reads as follows: —

"I came to my aunty's house on January 19, 1976. I stayed there for two days. On January 23, 1976 at 7.00 p.m. I went to the Bar at Jalan Besar for some drinks. I was having my drink, two male Indian were sitting there. They were staring at me. I also asked them if they knew me. The one who stared at me replied that his look was always such. For about 10 minutes nothing happened and we continued drinking. I did not look at them. After sometime, the deceased asked me if I wanted a fight. I refused. One of them came to my table poured some drink into my glass. Before doing so he forcibly brought me to his table. The deceased was the one who offered me some drink. Sometime later, the other male Indian left the table and walked towards Sungei Road and came back five minutes later. The deceased then patted my shoulder and asked me whether I would want to fight with him outside the Bar. I told him that I did not know him and so why was he asking me for a fight. Both of them were aggressive. I was terrified and ran to my aunty's house. I feared that they might be armed. I saw the handle of a knife on the deceased's friend. As such I took a knife from my aunty's house and went back to the Bar. They were standing outside the Bar. On seeing me they ran towards me. They seemed intent of beating me. The deceased punched me. I was intoxicated and very angry. I stabbed him. I cannot remember where and how many times I stabbed him. I did not know what I was doing. Without realising myself I went back to my aunty's place. I washed the knife and threw it somewhere in the house. I scolded my aunty's daughter for misbehaving. My aunty told me that my father was seriously ill. She then brought me to the bus stop. I boarded a bus and went home to Kluang, Johore. My aunty does not know anything about the incident."

The appellant elected to give evidence on oath. He said that he was drunk when he arrived at the Chinese liquor shop with two Indian friends, having consumed half a bottle of Chinese wine and six pints of toddy on an empty stomach. While they were drinking at the Chinese liquor shop, the deceased and Loganathan came in, ordered drinks and started drinking. He exchanged some words with Loganathan and

the deceased. Then Loganathan left the liquor shop and he noticed Loganathan had a knife by the side of his waist. His friends became frightened and so they paid for their drinks and went outside and remained outside for a while. He told his friends not to be frightened and to wait for him. He went to his aunt's house, changed his shirt and took a kitchen knife for his protection and then returned to the same liquor shop. Not seeing his friends outside, he went in thinking they had gone into the liquor shop. On entering he saw Loganathan and the deceased seated at a table. The deceased called him to their table, asked him to sit down and to have a drink with them. Although he declined the offer of a drink, the deceased ordered a quarter bottle of Chinese wine, poured the contents into three glasses and started to drink. They talked aggressively to him. Then he saw Loganathan leave the liquor shop and saw him talking to Suppiah and then return to the table. Then he saw Suppiah beckoning him to come out. He went out and Suppiah spoke to him. The deceased also came out and spoke to him. Then Suppiah who was with a girl left and the appellant and the deceased returned into the liquor shop and he was asked to drink. After that all three left the liquor shop and outside Loganathan and the deceased started punching him. He tried to ward off their punches by swinging his arms wildly and vaguely remembered he had something in his hand. Suddenly the deceased took off in one direction and Loganathan in another. He saw people gathering around and he also ran back to his aunt's house. He was drunk and dizzy and only vaguely remembered he was holding something. On arriving at his aunt's house, he saw a knife in his hand and blood on his hands. Shortly after his aunt told him that his father was very sick and that he should return to his own home, which was in Johore. His aunt took him to a bus stop and put him on a bus to Johore Bahru. On arriving at Johore Bahru, he took a taxi home to Kluang.

The trial judges rejected the appellant's evidence that he was assaulted by Loganathan and the deceased and that he defended himself by swinging his arms wildly. They accepted the evidence of Loganathan and found that the injuries the appellant inflicted on the deceased were not in exercise of any right of private defence. They found that it was the appellant who started the fight with the deceased in the course of which he stabbed the deceased in the chest and then ran away. They also found that the appellant inflicted the fatal stab wound, that the fatal injury was an intended injury and was not caused accidentally or otherwise unintentionally and was an injury which was sufficient in the ordinary course of nature to cause the death of the deceased. They also found that the appellant was not so drunk as not to know what he was doing at the material time and was not so affected by alcohol as to be incapable of forming the specific intent under Clause (c) of section 300 of the Penal Code. They also found that it was the appellant who provoked the deceased and picked up a fight with him. Accordingly, they found the appellant guilty of murder as charged as, on the evidence, the appellant was not entitled to the benefit of any of the General Exceptions laid down in the Penal Code nor to any of the Exceptions to section 300 of the Penal Code.

During the appeal, it was urged on behalf of the appellant that the trial judges erred in accepting Loganathan's evidence and Suppiah's evidence and should have accepted the appellant's evidence. Our attention was drawn to some contradictions in the evidence of Loganathan and Suppiah but in our judgment these were immaterial contradictions in the context of the clear and undisputed facts that the appellant had returned to the scene armed with a knife and that it was the appellant who inflicted the stab wounds on the unarmed deceased. Another submission on behalf of the appellant which was rejected was that the trial judges erred in law and in fact in admitting in evidence the cautioned statement of the appellant. In our judgment the trial judges were entitled on the evidence before them at the "trial within a trial" to find that there was no inducement, threat or promise and that the appellant's cautioned statement was made voluntarily.

In our judgment the evidence was overwhelming that the appellant caused the death of the deceased in circumstances which amounted to murder under section 300 of the Penal Code and we accordingly dismissed the appeal.

Appeal dismissed.

Solicitors: *Netto, Low & Pang.*

BANK OF CANTON LTD. v. DART SUM TIMBER (PTE.) LTD.

[C.A. (Chua, Kulasekaram and D'Cotta JJ.) March 14, 1978]
[Singapore — Civil Appeal No. 53 of 1977]

Practice and Procedure — Two actions in respect of same cause of action — Application for consolidation not granted — Plaintiff ordered to make election — Inherent jurisdiction to stay proceedings which are abuse of process — R.S.C. 1970, O. 4 r. 1 and O. 92 r. 4 — Supreme Court of Judicature Act (Cap. 15), First Schedule, para. 10.

In this case the claim of the appellants against the respondents was based on a guarantee given by the respondents in favour of the appellants whereby the respondents guaranteed payment to the appellants on demand all monies due and owing by Ta Leong Produce (Pte) Ltd. on the general balance of the account of that company with the appellants. The respondents filed their defence contending that the appellants had not given a notice of demand to them. The appellants had sent a notice of demand to the principal debtor, Ta Leong Produce (Pte) Ltd. and a carbon copy to the respondent. Subsequently the appellants on failure of the respondents to comply with their request to withdraw that defence, sent a notice of demand to the respondents and filed a fresh suit against them. They then applied for consolidation of both suits. The respondents on the other hand applied for an order that the appellants elect whether they intend to proceed on the first suit or the latter suit. The applications were heard by the Chief Justice who ordered that the appellants be ordered to elect within 42 days which suit they intended to proceed with and that pending the making of the election all further proceedings be stayed. No order was made on the order for consolidation. The appellants appealed to the Court of Appeal.

Held: (1) the respective causes of action in this case are not separate and distinct causes of action but are the same causes of action and the learned Chief Justice had exercised the discretion given to him by Order 4 Rule 1 correctly in refusing to make the order for consolidation;

(2) the court has an inherent jurisdiction to stay proceedings which are an abuse of its process. If a plaintiff brings